

**Changes made to Subcommittee Chairman Deal's June 1, 2006,
draft amendment in the nature of a substitute, during the
June 8, 2006, Subcommittee markup**

June 15, 2006

Sec. 101. Office of the National Coordinator for Health Information Technology.

In the June 1 draft, the President appointed the National Coordinator. In the Committee Print forwarded to the full Committee, the National Coordinator for Health Information Technology would be appointed by and report to the Secretary of Health and Human Services (HHS). Additionally, the National Coordinator for Health Information Technology will now promote personal health records and the use of health information technology (HIT) with health care clinical data.

Sec. 103. Interoperability planning process; Federal information collection activities.

In the June 1 draft, there was a requirement for a strategic plan. In the Committee Print, the National Coordinator will now be required to develop a schedule for the assessment and endorsement of core electronic communications (interoperability) guidelines in consultation with the American Health Information Community.

Sec. 104. Ensuring health care providers may maintain health information in electronic form.

In the June 1 draft, this provision permitted the submission to the Federal Government and maintenance by providers of data in an "appropriate" electronic format. In the Committee Print, only maintenance of data (not submission) is permitted and the modifier "appropriate" has been deleted.

Sec. 201. Procedures to ensure timely updating of standards that enable electronic exchanges.

In the June 1 draft, this provision allowed additions and modifications to transaction standards developed under the Administration simplification provisions added in the Health Insurance Portability and Accountability Act in 1996 without a secretarial notice and comment process. This provision has been changed so that the public comments received by the standards development organizations (SDOs), non-governmental agencies, during this process will be made available to the Secretary of HHS. In addition, the Secretary can accept additions or modifications recommended by the SDOs without going through a final rule, which was required in previous drafts.

Sec. 202. Rulemaking to upgrade ASC X12 and NCPDP standards.

The June 1 draft of this provision required the Secretary to promulgate final regulations for the upgrade of the standards described this section. This provision was changed to add a date certain, August 1, 2009, by which the Secretary would provide notice through the Federal Register of the update of the healthcare transaction standards specifically enumerated in this provision.

Title III: PROMOTING THE USE OF HEALTH INFORMATION TECHNOLOGY TO BETTER COORDINATE HEALTH CARE.

The exceptions to the Stark self-referral and anti-kickback fraud and abuse provisions that allowed procedures to give free healthcare technology to other providers have been modified in the following ways:

- The donor of free information technology cannot change the technology to keep the recipient from using the technology to communicate with others.
- If a recipient of technology, such as a beneficiary, uses fewer services as a result of care coordination, this would not be viewed as fraudulent inducement to get fewer services.
- The Secretary is no longer required to promulgate regulations as may be necessary to carry out these exemptions within 180 days after the date of the enactment of this Act.
- The Office of the Inspector General (OIG), not the Secretary of HHS, will conduct a study to assess the impact of the fraud and abuse exceptions created under this bill. As a part of this study, the OIG will consider the impact of the technology given out on healthcare quality, cost, and access.
- The exceptions to the anti-kickback provisions enforced by the OIG are effective 120 days after the effective date of the Act, not 180 days.